IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Smt. Dakhu Bai vs. Smt. Dhuli Bai & ors.

S.B.Civil Misc. Appeal No. 528/94 against the order dated 9.8.1994 passed by the learned District & Sessions Judge, Udaipur in Civil Misc. Case No.101/90.

Date of Order: November 16,2006.

PRESENT.
HON'BLE MR. PRAKASH TATIA, J.

Mr. Manish Shishodia for the appellant.
Mr. Dilip Kawadia for the respondents.

Heard learned counsel for the parties.

The appellant is aggrieved against the order of the learned District Judge, Udaipur passed in Civil Misc. Case No.101/99, whereby the trial court allowed the respondents' application for grant of succession certificate for gratuity of Rs.14,000/-, Insurance Policy-Rs.5,000/- and Provident Fund-Rs.44,000/-, in total Rs.44,000/- of deceased Ratan Das who was father of respondents.

Brief facts of the case are that the applicants-respondents daughters of deceased Ratan Das s/o Kishan Das submitted this petition under Section 372 of the Indian Succession Act, 1925 on the ground that Ratan Das died on 23.3.1988 leaving behind the respondents as legal heirs of class-I. The deceased Ratan Das's amount referred above was

lying in the department and to get above amount, a succession certificate may be issued in favour of the respondents. The respondents impleaded appellant Dakhu Bai, as according to respondents, the appellant Dakhu Bai had illicit relations with Ratan Das and she is claiming right in the properties of deceased Ratan Das.

The appellant submitted reply to the petition filed by the respondents wherein the appellant clearly admitted that the respondents are daughters of deceased Ratan Das. Her case is that she contracted *Nata* marriage with Ratan Das and out of the wedlock with said Ratan Das, one daughter Manju and son Madan born. Manju died at the age of 10 years whereas Madan is alive. It is also submitted that Ratan Das wrote an agreement in favour of the respondents on 9.7.1980 wherein he admitted that he contracted *Nata* marriage with the respondent and as per said agreement, the respondent shall be the legal successor of Ratan Das. It is submitted in the reply that till the life time of Ratan Das, the respondent lived with Ratan Das as his wife. She also stated that after the death of Ratan Das, she got the agricultural land of Ratan Das mutated in her and her son's names as well as in the name of daughters of deceased Ratan Das. She also submitted that after the death of Ratan Das, she got appointment on compassionate ground in the State Electricity Board. Since the appellant-non-applicant took a plea that Madan was son of Ratan Das, therefore, issue was also framed

that whether Madan was son of Ratan Das

The trial court held that the Ratan Das already died and the respondents are daughters of deceased Ratan Das. The appellant in her statement, admitted that her first husband was Kani Ram. She stated that during life time of Kani Ram, she contracted marriage with Ratan Das. She did not plead that her marriage with Kani Ram was dissolved by any lawful way. She even did not produce any evidence to prove custom. The court below also considered the evidence of the brother of the appellant who also admitted marriage of the appellant with Kani Ram and who stated about contracting second marriage by the appellant with Ratan Das in the life time of Kani Ram. The trial court, therefore, held that the appellant is not legal heir of deceased Ratan Das. The appellant also could not produce any evidence that Madan was the born son of deceased Ratan Das. The trial court, therefore, granted succession certificate in favour of the respondents vide order dated 9.8.1994.

Therefore, this appeal by the alleged wife of deceased Ratan Das.

According to the learned counsel for the appellant, the respondents themselves admitted the relationship of the appellant with deceased Ratan Das. It is submitted that in the caste of the appellant there is custom of divorce through *panchayati* and contracting marriage

by way of *Nata*. It is submitted that the appellant got the appointment in place of her husband deceased Ratan Das in the State Electricity Board. She also got mutation of her name for agricultural land. In view of the above, it is fully proved that the appellant was living with the deceased Ratan Das as wife till Ratan Das died and, therefore, presumption can be drawn in favour of valid marriage of appellant with Ratan Das. The learned counsel for the appellant also referred the agreement executed by deceased Ratan Das in favour of the appellant.

The learned counsel for the respondent vehemently submitted that the respondents are admittedly daughters of deceased Ratan Das. The respondent did not plead that she contracted second marriage with Kani Ram and she was separated or her marriage was dissolved in accordance with law or in accordance with the customs. So far as the custom is concerned, there is no pleading and no evidence also. It is also submitted that even for contracting *Nata* marriage, there is no pleading apart from the fact that there is no evidence. It is also submitted that the respondent and her witnesses are absolutely unreliable as they gave totally false statement in Court and took the stand of separation from Kani Ram in evidence only.

I considered the submissions of the learned counsel for the parties and perused the record.

It is not in dispute that the respondents are daughters and,

therefore, they are entitled to succession certificate for the properties of Ratan Das for which application has been filed by the respondents. In case it is found that the appellant is wedded wife of deceased Ratan Das then she may also be entitled to share in the property and in case it is found that Madan son of the appellant, is son of deceased Ratan Das, then he may also have share in the property. The burden to prove the issue was upon the respondent in view of the fact that paternity of the respondent is not in dispute. The appellant, in her reply to the petition under Section 372 of the Act of 1925, did not plead that she contracted first marriage with Kani Ram and her marriage was dissolved in accordance with law or customs and thereafter she contracted marriage with Ratan Das. Therefore, she was not entitled to take a plea on the basis of customs for separation from Kani Ram. Be it as it may be, there is no evidence to prove the custom of dissolution of marriage otherwise than as provided under the Hindu Marriage Act because, according to the appellant herself, she contracted marriage with Ratan Das in the year 1980 or 1982 after coming into force of the Hindu Marriage Act, 1955.

The appellant is not a reliable witness because of the fact that the appellant in her cross-examination firstly stated that she is not knowing Kani Ram of Damani (village) and thereafter she stated that her first husband was Kani Ram of Damani. She stated in cross-examination

that Kani Ram died about 10-15 years ago. Thereafter she stated that she has no knowledge that Kani Ram is alive and is living at Udaipur. The appellant's brother NAW-2 Ganesh Lal also admitted that Kani Ram and Prabu Das both are alive. In view of the above fact, the appellant failed to prove her valid marriage with deceased Ratan Das despite the fact that there may be an agreement executed between Ratan Das and the appellant. The fact of her getting employment from the State Electricity Board on the basis of the agreement was rightly rejected by the court below because of the simple reason that the appellant failed to prove her valid marriage with Ratan Das.

In view of the above, I do not find any merit in the appeal. Hence the appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

mlt.